



1            THEREFORE, for the reasons set forth herein, Plaintiff respectfully requests the Court deny  
2 Defendant's Motion for a Stay of Proceedings.

3            RESPECTFULLY SUBMITTED this 4th day of June 2009.

4            GLIEGE LAW OFFICES, PLLC

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8            John G. Gliege

9            Original and thirteen copies of the foregoing  
10           Mailed this 4th day of June 2009 to:

11           Docket Control Center  
12           Arizona Corporation Commission  
13           1200 W. Washington Street  
14           Phoenix, AZ 85007

15           Copies of the foregoing  
16           Mailed/Delivered this 4<sup>th</sup> day of June 2009 to:

17           Dwight D. Nodes, Assistant Chief ALJ  
18           Hearing Division  
19           Arizona Corporation Commission  
20           1200 W. Washington Street  
21           Phoenix, AZ 85007

22           Janice Alward  
23           Legal Division  
24           Arizona Corporation Commission  
25           1200 W. Washington Street  
26           Phoenix, AZ 85007

27           Ernest G. Johnson, Director  
28           Utilities Division  
29           Arizona Corporation Commission  
30           1200 W. Washington Street  
31           Phoenix, AZ 85007

32           John O. Breninger  
33           P.O. Box 2096  
34           Pine, AZ 85544

35           Robert M. Cassaro  
36           P.O. Box 1522  
37           Pine, Arizona 85544

38           Fennemore Craig, P.C.  
39           Attn: Mr. Jay L. Shapiro  
40           3003 North Central Ave. Ste 2600  
41           Phoenix, AZ 85012-2913  
42           Attorneys for Pine Water Company

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COPY

5 **John G. Gliege (#003644)**  
6 **Attorney for Pine Strawberry Water Improvement District**

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF YAVAPAI**

9 **PINE STRAWBERRY WATER )**  
10 **IMPROVEMENT DISTRICT, a Tax Levying )**  
11 **Public Improvement District pursuant to )**  
12 **A.R.S. §§ 48-901 to 48-966 inclusive, and §§ 48- )**  
13 **1011 to 48-1019 inclusive and all amendments )**  
14 **and supplements thereto, )**

**Case NO. P-1300-CV-20090785**

**MOTION TO VACATE ORDER FOR  
IMMEDIATE POSSESSION**

15 **Plaintiff,**

16 **v.**

17 **PINE WATER CO., INC., an Arizona )**  
18 **Corporation; STRAWBERRY WATER CO., )**  
19 **INC., an Arizona Corporation; BROOKE )**  
20 **UTILITIES, INC., an Arizona Corporation; )**  
21 **COUNTY OF GILA, a political subdivision of )**  
22 **the State of Arizona; JOHN DOES 1 through )**  
23 **10; and BLACK AND WHITE )**  
24 **PARTNERSHIPS 1 through 10, )**

25 **Defendants.**

26 **COMES NOW THE PLAINTIFF, Pine Strawberry Water Improvement District, (the District), by**  
27 **and through undersigned counsel, hereby moves the Court for an Order Vacating a portion of the Order**  
28 **of May 3, 2009 regarding the Order for Immediate Possession on the grounds and for the reasons set**  
29 **forth herein.**

1. Pine and Strawberry Water Companies as they were moving out are leaving behind a number of ADEQ and ACC violations, which the District would have to remedy at its cost. This is not

1 acceptable. These include leaving in disrepair at least one major well, as well as some other  
2 problems with the water systems.

- 3 2. The minimal information which has been provided by Pine and Strawberry Water Companies thus  
4 far in an effort to comply with the Order, is insufficient to meet the stipulation requirements. For  
5 example, our initial review indicates that the data lists in some instances are at best randomly  
6 organized, or organized by first names of clientele. Further, the lists do not address the location of  
7 the services nor do the maps provide a legend as to the meaning of the notations thereon.  
8 Furthermore, some of the maps are not legible. No information was provided concerning meter  
9 sizes. There is no method to coordinate billing addresses with the service information and there do  
10 not appear to be service addresses or locations. Not all customers were reported on the lists.
- 11 3. The transition of the electrical power, water service, gas service, and telephone service as the same  
12 is involved in both the operations and in the telemetry for the operations of the District System  
13 from PWC and SWC to the District is not being concluded in an orderly manner. The Pine and  
14 Strawberry water systems have not provided the District any information as to how many meters  
15 are involved, their location and for what facilities such meters provide power.
- 16 4. The operation of the water systems and the telemetry equipment concerning the same is not being  
17 set up for a smooth transition. The District will have to be provided with the operations and  
18 maintenance manuals and the locations of the telemetry equipment for the operations of the water  
19 systems. It will also have to have the ability to convert this system to a District owned and operated  
20 system. Additionally the District needs the appropriate security information to ensure that all  
21 telemetry systems are safe from hackers or other mischief.
- 22 5. The District has been made aware of a dispute, which one of the water companies is having with  
23 the owner of a particular well. The District has been made aware of the filing of a Motion to  
24 Intervene in the Condemnation proceedings by this individual. Since that dispute affects the used  
25 and useful property, which is being taken by the District it is a significant matter. It is our  
26 understanding that that well in question provides more than ten percent of the water system supply.  
27 Therefore, it is necessary for that issue to be resolved prior to the time the District takes immediate  
28 possession of the system.

1 6. There is also a concern about some aid in advance of construction agreements, which  
2 Pine/Strawberry Water Company may have entered into, collected money for, and not yet  
3 constructed the improvements. The District is taking the position that such agreements are not  
4 being transferred to the District; however, the District is concerned about the impact of such  
5 agreements upon its constituency. The District understands that the handling of these matters  
6 would be up to the Pine/Strawberry Water Company to complete the work that they contracted to  
7 complete in a timely manner at the company's sole expense. Likewise, if there are additional  
8 agreements to which PWC or SWC are a party concerning the construction of improvements, these  
9 too have to be fully resolved and the construction complete, or the money refunded to the payors  
10 or some other guarantee of the construction of the improvements provided.

11 7. Because of these reasons and others, Compass Bank, which has committed to loan money to the  
12 District for this transaction, was not willing to fund the District's immediate possession of the used  
13 and useful assets of the Pine and Strawberry Water Companies and those of Brooke Utilities, Inc.

14 THEREFORE, for the reasons set forth herein, Plaintiff respectfully requests the Court vacate the  
15 Order for Immediate Possession, and the requirement for the deposit of funds.

16 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of May, 2009.

17 GLIEGE LAW OFFICES, PLLC

18  
19 /s/ John G. Gliege  
20 John G. Gliege  
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1 Original of the foregoing delivered/mailed  
This 28<sup>th</sup> day of May, 2009 to:

2  
3 Yavapai County Superior Court  
4 Attn: Clerk of Court  
120 S. Corte  
Prescott, AZ 86301

5 Copies of the foregoing delivered/mailed  
6 This 28<sup>th</sup> day of May, 2009 to:

7 Fennemore Craig, P.C.  
8 Attn: Bart Wilhoit  
3003 N. Central Ave, Ste 2600  
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9 Gila County Attorney's Office  
10 Attn: Bryan B. Chambers, Chief Deputy County Attorney  
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11 Globe, AZ 85501

12 Brown & Brown Law Offices, P.C.  
13 Attn: Mr. Bradley J. Palmer  
PO Box 1890  
14 St. Johns, AZ 85936